IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5293 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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AZAD VIKAS TRUST

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5293 of 1999

MR MEHUL H RATHOD for Petitioner No. 1

MR MK DAGLI for Respondent No. 1,3

MR AD OZA for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 27/08/2002

ORAL JUDGEMENT

#. The petitioner is a charitable trust registered under the provisions of the Bombay Public Trusts Act, 1950. Since the petitioner wanted to start the Girls School,

namely, A.B.T. Girls High School at Kanodar by opening Standard VIII, the petitioner applied to the Secondary Education Board, by way of appropriate application, on 12.11.1997. The Board rejected the said application by passing the order dated 12.1.1999 on the ground that the building facility is not adequate as required by Regulation No.9 (13) (1) (2); the need of the school is not established in the area and that the school is not likely to get adequate strength of the students. On the aforesaid grounds, the application was rejected. The petitioner, thereafter, carried the matter before the appellate authority. The appellate authority also dismissed the appeal by its order dated 17.5.1999. The appellate authority came to the conclusion that the school is having balance of Rs.51000/-; that in the nearby area, there are two secondary schools, which are in existence within the radius of 5 kms. Other three schools are also established within the radius of 10 kms. It is found that the construction of the building is not adequate and there is no adequate hygienic facility in the school. On the aforesaid grounds, the appeal was dismissed. Being aggrieved by the said order of the appellate authority, the petitioner has preferred this petition.

#. At the time of hearing of this petition, it is argued by Mr.Rathod, that the State Government has taken into consideration the additional grounds at the time of deciding the appeal and that the appeal was rejected on irrelevant grounds. He further submitted that the petitioner - trust wanted to start the Girls School, while in the radius of 5 kms. no other Girls School is situated, as, in other schools coeducation is imparted. He also submitted that, this being a Muslim Educational School, and considering the conservative approach of some parents, the parents are not sending their children in the school, where the coeducation is imparted. Keeping that object in mind, the petitioner wanted to start the girls school in the area. He also submitted that the petitioner is willing to increase the bank balance, which may satisfy the authority. He submitted that, if any more hygienic facilities are required to be provided, the petitioner is also willing to provide the same. He, therefore, submitted that the matter may be remanded back to the State Government for reconsideration.

#. As against that, Mr.A.D.Oza, learned advocate, who is appearing for the board, submitted that, if there is any subsequent development after filing of this petition, in any manner, and, if position is different than the one, which was prevailing at the relevant time, the petitioner

may apply for fresh registration, and, if any fresh application is made with appropriate material, the Board will consider the same objectively without being influenced by the earlier decision.

#. Considering the fact that, considerable time has passed after the petitioner moved the Board for giving the trust the permission for starting the school, it would be just and proper to direct the petitioner to apply again to the Board with all necessary particulars about existing financial situation and available facilities in the school. If with these particulars, appropriate application is made, the Board may consider the same and a fresh decision may be taken in accordance with law without being influenced by the earlier decision taken by the Board or by the State Government. At the time of taking the decision, the board may also consider, whether such permission is likely to result into unfair competition or not. It is, however, clarified that, at the time of taking the decision, the Board may also take into account the fact that, the petitioner wants to start the school only for the girls and if there is no other girls school available in the nearby vicinity, such fact may also be taken into consideration at the time of deciding the application. Mr.Rathod has fairly submitted that, if the permission is granted, the petitioner will not enroll any students from other schools for the period of three years by enrolling the students of Std.VIII of such other schools. Mr.Rathod also submitted that, at present, the petitioner trust is having all facilities including the financial stability. The board may accordingly consider all these aspects at the time of deciding the application. The petitioner is accordingly permitted to make the application again, and, if such application is made, the Board may decide the said application as early as possible and latest by 31.3.2003. The board may also take into consideration the observations made by this Court in this order as well as may also take into account the Rules and Regulations framed in this behalf. However, the decision may be taken within the aforesaid stipulated time, because, if the registration is granted, the petitioner can start the school from the next academic year, i.e. from June, 2003. It is needless to say that the application may be decided by the board as per the existing situation prevailing as on today.

#. The petition is accordingly disposed of in the aforesaid line. Rule is discharged with no order as to costs.

(P.B.Majmudar,J)

(pathan)